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**IN THE  
COURT OF APPEALS OF INDIANA**

S.C.T., )  
)  
Appellant-Defendant, )  
)  
vs. ) No. 71A03-0603-JV-117  
)  
STATE OF INDIANA, )  
)  
Appellee-Plaintiff. )

APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-0510-JD-818

**September 5, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

## SHARPNACK, Judge

S.C.T. appeals the trial court's order awarding wardship of him to the Indiana Department of Correction. S.C.T. raises one issue, which we restate as whether the trial court abused its discretion when it ordered S.C.T. to be placed under wardship of the Indiana Department of Correction (DOC). We affirm.

The relevant facts follow. On October 26, 2005, S.C.T. attempted to leave a Meijer Store without paying for an item he had picked up in the store and concealed in his clothing. Store security stopped and detained S.C.T., and he was later arrested. On November 2, 2005, the State alleged that S.C.T. was a delinquent child alleging that he committed an offence that would be theft as a class D felony<sup>1</sup> if committed by an adult. At a December 20, 2005 hearing, S.C.T. admitted to the allegation of theft.

On February 14, 2006, a dispositional hearing was held. At the hearing, the State, referring to the Pre-Disposition Report, stated in pertinent part:

[S.C.T.] is before the court for the first time for disposition on his fourth referral to the Probation Department. At the time of this referral, he was awaiting his initial hearing on his third referral to the Probation Department. He did spend eighteen days in secure custody, as well as, approximately, one month on the electronic monitoring program. Since his release from the electronic monitoring program, he's been on trust house arrest to his parents' custody. At the time of his original detention, he tested positive for marijuana. He also admitted during the COSAT evaluation to the use of alcohol and marijuana . . . He continues to miss classes and receives disciplinarian referrals from school even though awaiting disposition. Parents and [S.C.T.] have successfully and voluntarily completed the Parenting Out of Control Teens Program in the last several months. A Youth Assessment and Screening Instrument was completed for [S.C.T.] and he was found to be a high risk to re-offend with moderate protective factors.

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<sup>1</sup> Ind. Code § 35-43-4-2 (2004).

Feb. 14, 2005 Hearing Transcript at 3-4. After the State reiterated its formal findings, they requested that S.C.T. be placed on probation and ordered to participate in a home-based services program. Furthermore, the State recommended that several special conditions of probation be imposed, including, among others things, that he be placed on electronic home monitoring for up to ninety days. S.C.T. generally agreed with the conditions of probation, yet requested that he not be placed back on electronic home monitoring. Nonetheless, the trial court ordered S.C.T. to be placed under wardship of the DOC. In the trial court's dispositional order, it noted in pertinent part:

Said child is in need of supervision, care, treatment and services which are NOT available in the local community.

The Respondent is in need of services beyond those which can be provided through probation services.

There is no available person or facility in St. Joseph County Indiana which can provide the Respondent with the necessary services.

\* \* \* \* \*

The juvenile has failed to abide by Court ordered terms of probation.

The present offense is serious in nature warranting placement in a secure facility.

The juvenile's past history of delinquent acts, even though less serious, warrants placement in a secure facility.

Lesser restrictive means of controlling the juvenile's behavior have been investigated or tried.

Appellant's Appendix at 6-7.

The issue is whether the trial court abused its discretion by ordering S.C.T. to be placed under wardship of the DOC. On appeal, S.C.T. argues that the trial court failed to comply with statutory considerations regarding the welfare of the child, the safety of the community, or the policy favoring the least harsh disposition. Specifically, he argues that the trial court's dispositional order placing him under wardship of the DOC was neither the least restrictive alternative nor the most appropriate setting available to him as statutorily required, pursuant to Ind. Code § 31-37-18-6.<sup>2</sup> The State argues that S.C.T.'s commitment to the Indiana Department of Correction was proper considering the fact that other less restrictive alternatives had been pursued and were shown to be ineffective.

The choice of a specific disposition for a delinquent child is within the discretion of the trial court, subject to the statutory considerations of the welfare of the child, the safety of the community, and a statutory policy of favoring the least harsh disposition. A.M.R. v. State, 741 N.E.2d 727, 729 (Ind. Ct. App. 2000). We may overturn the trial court's disposition order only if we find that the trial court has abused its discretion. A.D. v. State, 736 N.E.2d 1274, 1276 (Ind. Ct. App. 2000). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and

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<sup>2</sup> Ind. Code § 31-37-18-6 provides: "*If consistent with the safety of the community and the best interest of the child*, the juvenile court shall enter a dispositional decree that: (1) is: (A) in the *least restrictive* (most family like) and *most appropriate setting available*; and (B) close to the parents' home, consistent with the best interest and special needs of the child; (2) least interferes with family autonomy; (3) is least disruptive of family life; (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian" (emphasis added).

circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. E.H. v. State, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), trans. denied.

This court has previously noted that when the trial court is considering a dispositional decree, it is required to select the least restrictive placement in most situations. K.A. v. State, 775 N.E.2d 382, 386 (Ind. Ct. App. 2002), trans. denied. “However, [Ind. Code § 31-37-18-6] contains language which reveals that under certain circumstances a more restrictive placement might be appropriate.” Id. at 386-87. The statute requires placement in the least restrictive setting only if such a placement is “consistent with the safety of the community and the best interest of the child.” Ind. Code § 31-37-18-6. In other words, “the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement.” K.A., 775 N.E.2d at 387.

Here, the record reveals that S.C.T. had a history of delinquent behavior, including prior true findings for theft and criminal mischief, school detentions for attendance issues, as well as school suspensions for disciplinary problems including harassment, insubordination, and bullying. Furthermore, S.C.T. admitted to using alcohol and marijuana, he had tested positive for marijuana, and despite the fact that he was awaiting his disposition hearing in the instant case, he continued to miss class and receive disciplinary referrals from school. S.C.T.’s parents had shown some initiative by successfully and voluntarily completing the Parenting Out of Control Teens Program.

However, as the trial court noted, S.C.T.'s parents had been known to minimize his poor behavior and make excuses for him, and that overall, S.C.T. exhibited a lack of respect for their authority.

In deciding an appropriate disposition for S.C.T. that was consistent with the safety of the community and his best interests, the trial court was faced with two alternatives—either place S.C.T. on probation with special probationary conditions and order his participation in an in-home services program, or place him under wardship of the DOC. Here, the trial court had evidence before it that S.C.T. was not receiving proper care and discipline from his parents at home. As such, the trial court was under no obligation to revisit failed strategies, namely, an in-home services program, before placing S.C.T. in a highly structured environment outside his family and home. Further, as we have said before, “in certain situations the best interest of the child is better served by a more restrictive placement.” K.A., 775 N.E.2d at 387. Thus, we cannot say the trial court abused its discretion in placing S.C.T. under wardship of the DOC. See, e.g., M.R. v. State, 605 N.E.2d 204, 208 (Ind. Ct. App. 1992) (noting that while commitment to the Indiana Boys School “should be resorted to only if less severe dispositions are inadequate, there are times when such commitment is in the best interests of the juvenile and society in general”).

Lastly, the State requests this Court to remand to the trial court for correction of S.C.T.'s dispositional placement of him under wardship of the DOC to a “statutorily approved term.” Appellee’s Brief at 6. The State provides no argument or basis for this

request, and no reference to a statute that would dictate what term would be “approved.” On page one of the State’s brief, it indicates that the trial court had awarded guardianship to the DOC “for a recommended period of eighteen months.” Appellee’s Brief at 1. The State makes no citation to the record to support this assertion, and we find nothing in the record before us to support it. The dispositional order has no such provision. We invite the State to petition for rehearing, and be more forthcoming on its request for remand.

For the foregoing reasons, we affirm the trial court’s dispositional order placing S.C.T. under wardship of the DOC.

Affirmed.

NAJAM, J. and ROBB, J. concur